Morningstar, Inc., License Agreement

1. License.

- (a) **Grant of License:** Effective this <u>26th</u> day of <u>February, 2010</u> (2/26/2010), Morningstar, Inc. ("Licensor") grants to the <u>South Dakota Investment Council</u> ("Licensee") an English-only, non-exclusive, non-transferable license to: (i) use and/or distribute the Licensor products and/or services described herein (the "Product") solely for the purpose and in the manner detailed in Exhibit A, a copy of which is attached hereto and incorporated herein; and (ii) use and/or distribute, solely in conjunction with the Product, the Licensor intellectual property identified in Exhibit A. No other licenses or rights to the Product or the intellectual property except those specifically set forth in this license document and Exhibit A (collectively, the "Agreement") are granted to Licensee.
- (b) **Attribution and Use:** If Licensee displays all or a portion of the Product, Licensee will include in a prominent location the applicable disclaimer(s), as more particularly described in Exhibit A, or ensure that any applicable disclaimer(s) included in the Product are not removed.
- (c) License Limitations: Licensee will not use the Product, any derivation of the name "Morningstar" or any other Licensor intellectual property in any advertising or marketing materials or issue any public communication related to this Agreement without submitting the materials for Licensor's review. Licensee is not required to wait for Licensor approval before proceeding with its publication, production or other dissemination. However, Licensee must follow all terms and conditions governing Licensor's Product use found within this Agreement. Licensee shall not be required to submit for Licensor review any updated versions of materials previously reviewed by Licensor, provided that the update is only with respect to data and not otherwise materially different from the original submission. If Licensor determines that the materials in question do not adhere to the terms and conditions of this Agreement, Licensor may send Licensee written notification of the required revisions to them. Following such written notification, Licensee must comply with any requested changes to the extent that such changes are consonant with the terms of this Agreement prior to publishing, producing or disseminating any materials not currently printed, or in the case of electronic dissemination, within a reasonable time period following notification. Licensor will not be held liable for advertising, promotion, or other related costs incurred by Licensee, in the event of requested revisions to the materials by Licensor. Lack of compliance with this submission process on a repeated basis or in a flagrant manner is grounds for immediate termination of this Agreement. Except as otherwise explicitly provided herein, Licensee may not: (i) sublicense, publish, transmit, transfer, sell, reproduce, distribute, display, alter or in any way exploit the Product; (ii) combine, mix or integrate the Product with the products of any other suppliers in a manner in which attribution is unclear; (iii) use or actively market the Product outside of the territories of the United States; or (iv) distribute the Product or any portion thereof to any of the Direct Competitors set forth in Exhibit A.
- 2. Term and Termination. The term ("Term") of this License Agreement begins on the Effective Date set forth in Exhibit A and will continue for the period of time set forth in Exhibit A. In the event this Agreement expires or terminates for any reason, Licensee will immediately cease to use the Product and the intellectual property, and destroy all copies thereof (in any form or media) within Licensee's possession, custody or control. Notwithstanding the foregoing and except for as expressly detailed in Exhibit A, Licensee shall not be required to destroy any Licensee materials already produced containing all or part of the Product ("Licensee Materials") for ninety (90) days' time following expiration or termination of this Agreement. Additionally, Licensee will be entitled to retain (but not use), for archival purposes, electronic and/or paper copies of all Licensee Materials containing the Product. This License Agreement depends upon the continued availability of appropriated funds and expenditure authority from the South Dakota Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the Licensee. Termination for any of these reasons is not a default by the Licensee nor does it give rise to a claim against the Licensee. Licensee agrees to provide Licensor reasonable notice of termination under this provision. Further notwithstanding the above, Licensee will remain responsible for payment of any quarterly fee payment that was due prior to notice of termination being provided to Licensor. The provisions of Sections 2, 3, 6, 8, 9, 10, 11, 12, and 13 will survive any expiration or termination of this Agreement.
- 3. Fees and Payment. Licensee will pay Licensor the amount(s) set forth in Exhibit A to license the Product during the Term. Full payment is due within thirty (30) days of the invoice date. Overdue accounts not disputed in good faith will accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum allowed by law, whichever is less. In the event any such overdue accounts remain unpaid for thirty (30) days or more, Licensor shall also have the right to withhold future deliveries of, or prohibit future access to, the Product until such accounts plus any applicable interest charges are paid in full. Nothing in this Section 3 shall restrict or limit Licensor's ability to pursue other remedies or to terminate this Agreement, as set forth herein. Licensee will be invoiced and shall be responsible, to the extent that

applicable tax laws and regulations so require on the part of Licensee, for relevant taxes and like charges arising directly in connection with this Agreement, except for taxes on Licensor's net income and payable by Licensor.

- 4. Inspections and Audits. Licensor reserves the right, at its expense and upon reasonable notice, to inspect and audit the relevant records of Licensee and/or its agents during normal business hours to ensure Licensee's compliance with the terms of this Agreement.
- 5. Delivery. Delivery of the Product will be made in the time and manner set forth in Exhibit A.
- 6. Ownership. Licensor retains all right, title and interest in the Product, as well as in any enhancements or modifications thereto, and any Licensor intellectual property used in conjunction with it or otherwise provided by Licensor under this Agreement. No work performed by Licensor or its agents hereunder shall be deemed "work for hire," as defined as 17 U.S.C. § 101. Further, Licensee will not, at any time, contest or assist any other party in contesting the rights of Licensor in the Product or any other Morningstar intellectual property provided in this Agreement.
- 7. Service Support. Licensor will make commercially reasonable efforts to (a) ensure that the Product is free of viruses and damaging or disabling code, errors or other defects and (b) to correct any such errors or defects within a reasonable amount of time. In addition, Licensor will provide such other support for the Product as set forth in Exhibit A.
- 8. Representations and Warranties. Licensor represents and warrants that it has the right to grant Licensee a license to use the Product and the intellectual property identified in Exhibit A in the manner, and for the purpose, set forth in this Agreement. In addition, each party represents and warrants that this Agreement is binding on it and that its execution and delivery of this Agreement does not violate any of its other obligations or agreements.
- 9. Disclaimer of Warranties. Licensor does not guarantee the accuracy, integrity, completeness or timeliness of the Product. Except as otherwise set forth herein, the Product is provided "as is," with all faults and the entire risk as to satisfactory quality, performance, accuracy and effort is with Licensee. Except as set forth in Section 8, Licensor and its content providers disclaim all other warranties or conditions, express or implied, including, but not limited to, (a) absence of viruses and damaging or disabling code, (b) any warranties or representations that (i) the Product or any portion of it will be error-free or that access thereto will be uninterrupted, (ii) the Product or any portion of it is compatible with any particular computer software or platform, or (iii) errors or defects in the Product will be correctable or corrected; (c) the implied warranties or conditions of merchantability, fitness for a particular purpose, accuracy of informational content or any implied warranties arising from course of dealing or course of performance.
- 10. Limitations of Liability. Except as otherwise explicitly provided herein and except for Licensee's payment obligations hereunder, neither party's aggregate liability for any direct damages arising under or in any way relating to this Agreement, the Product or any other Licensor services provided hereunder whether arising in contract, tort or any other legal theory shall exceed the greater of (i) one hundred thousand dollars (\$100,000) or (ii) the total fees and costs paid or payable by Licensee to Licensor under this Agreement for the one (1) year period prior to the date on which such damages first arose in connection with this Agreement. The aforementioned limitation of liability will not apply to claims associated with (a) the infringement of any third party's intellectual property by the Product, (b) either party's willful misconduct or gross negligence, or (c) Licensee's misuse (including, but not limited to, any material violations of use restrictions) of the Product or theft of Licensor's intellectual property or data. Notwithstanding any other provision in this Agreement to the contrary, neither party will be liable for any punitive, special, incidental, indirect, exemplary or other, similar forms of consequential damages.
- 11. Breach. Each party will have thirty (30) days from the date of receiving written notice of breach to cure it; provided, however, that the cure period for Licensee's failure to make timely payment hereunder will be seven (7) days from the date of Licensee's receipt of written notice thereof. If a breach is not cured within the applicable cure period, the non-breaching party may terminate this Agreement on written notice to the other. Notwithstanding any provision in this Agreement to the contrary, Licensor may immediately terminate this Agreement and will be entitled to seek injunctive relief, without notice or the necessity of bond, in the event of any Licensee breach with respect to the ownership, use, copying, distribution of the Product or other Licensor intellectual property. Notwithstanding any provision in this Agreement to the contrary, each party will be entitled to seek injunctive relief, without notice or the necessity of bond, in the event of any breach, or threatened breach, by the other party of Section 14 hereof.
- 12. Governing Law. For the purpose of this Agreement all products or services provided by Licensor are deemed provided in the State of South Dakota. This Agreement will be governed by the laws of the State of South Dakota, without regard to its conflict-of-law provisions. The parties agree that any and all actions relating to this Agreement will be brought in the state courts located in Minnehaha County, South Dakota, and that each party is subject to the personal jurisdiction of those courts.

- 13. Confidentiality. The parties acknowledge that in the course of their dealings hereunder, each has or may acquire information about the other, its business activities and operations, its technical information and its trade secrets, all of which, including the terms of this Agreement, are proprietary and confidential (the "Confidential Information"). Subject to South Dakota Codified Laws Chapter 1-27 on Public Records and Files and Senate Bill 147 passed during the 2009 session of the South Dakota Legislature (a copy of which has been provided to Licensor), each party hereby agrees that: (a) all Confidential Information will remain the exclusive property of its owner; (b) such party will maintain, and will use prudent methods to cause its employees and agents to maintain, the confidentiality and secrecy of the other's Confidential Information and to not copy, publish, disclose or otherwise use (other than pursuant to the terms hereof) the other's Confidential Information; and (c) such party will return or destroy all copies of the other's Confidential Information upon request of the other party. Notwithstanding the foregoing, Confidential Information shall not include any information to the extent it: (i) is or becomes a part of the public domain through no act or omission on the part of the receiving party; (ii) is disclosed to third parties by the disclosing party without restriction on such third parties; (iii) is in the receiving party's possession, without actual or constructive knowledge of an obligation of confidentiality with respect thereto, at or prior to the time of disclosure under this Agreement; (iv) is independently developed by the receiving party without reference to the disclosing party's Confidential Information; (v) is released from confidential treatment by written consent of the disclosing party; or (vi) is required by governmental or regulatory agency, or by court order to be disclosed.
- 14. Agreement. This Agreement is the entire agreement between the parties with respect to the Product, is legally binding on both parties and supercedes all other agreements, supplements, proposals and/or verbal or written communications between the parties regarding this matter. This Agreement may only be modified by written document signed by both parties. Neither party may assign this Agreement in whole or in part without the other party's prior written consent, which shall not be unreasonably withheld or delayed; provided, however, that Licensee may assign this Agreement in whole without Licensor's consent, (i) to any of its affiliates; or (ii) to any entity purchasing substantially all of the assets of Licensee or it's parent, or which succeeds Licensee by merger, operation of law or otherwise. Notwithstanding the foregoing, Licensee shall promptly notify Licensor of any such assignment, and if Licensor reasonably determines that such assignment has or may have a negative impact to itself or its business. Licensor may terminate this Agreement within sixty (60) days of receipt of notice. The parties acknowledge that there are no intended third party beneficiaries of this Agreement.

The parties have each signed, or caused their authorized representatives to sign, this binding Agreement.

Morningstar, Inc

Name: Nicolas S. Owens

Title: Director, Institutional Equity Research Business

Licensee:

South Dakota Investment Council

Name: Matthew Clark

Title: Chief Investment Officer

Date: 3-970

EXHIBIT A MORNINGSTAR® INSTITUTIONAL EQUITY RESEARCH SERVICE

1. Definitions:

- Product shall mean the Morningstar® Institutional Equity Researchsm materials, and any data or analysis contained therein, that Licensor provides pertaining to the shares of companies listed and trading in the jurisdiction(s) denominated in Schedule 1 to this Exhibit A, excluding materials and information related to new issues within one year of their initial public offering date ("Initial Public Offerings"), and subject, in all cases, to any further definition(s) and/or limitation(s) contained in that Schedule 1. The specific elements of the Product (each. an "Element") are set forth on Schedule 1 to this Exhibit A. Licensor reserves the right to modify the Product or any information contained therein in its sole discretion, provided that any such modification does not materially and adversely affect the ability of Authorized Users to utilize the Product;
- b. Authorized User shall mean a natural person who is employed by or an agent of the Licensee, to whom Licensee provides a user name and password to enable such person to access and/or use the Product pursuant to this Agreement. Licensee shall provide a separate user name and password combination to each Authorized User.
- 2. Grant of License: Licensor hereby grants to Licensee a limited, non-transferable, non-exclusive license to make the Product available to Authorized Users in the manner, and for the purposes, set forth in the Use and Distribution Section below. No other licenses or rights to use the Product other than those expressly set forth herein are granted to Licensee and Licensee will limit the number of Authorized Users to the number set forth below.

3. Use and Distribution:

- Internal Use: Licensee may provide user name and password combinations to a maximum of fifteen (15) Authorized Users for the purpose of their conducting research and analysis pursuant to this Agreement.
- 4. Delivery: The Product will be housed on an FTP or HTTP site (the "Licensor Site") that may be accessed by each Authorized User, Any additional Elements of the Product shall be delivered as set forth on Schedule 1 to this Exhibit A.
- 5. Delivery Frequency: Ratings and data are updated by the close of business every day that major U.S. stock exchanges are open; written updates will occur as market events warrant.
- 6. Effective Date: This Agreement shall be deemed effective as of the start of business on February 26, 2010.
- 7. Initial Delivery Date: The Product will be made available to Authorized Users on the Licensor Site no later than the close of business on March 1, 2010 (3/1/2010).
- Term: The Term of this Agreement shall commence on the Effective Date and continue for twelve (12) months from the Initial Delivery Date.
- 9. Fees: In exchange for above grant of license from Licensor, Licensee shall pay Licensor the annual licensing fee ("Fee") of 36,000.00, invoiced quarterly, in advance, for the term of this Agreement.
- 10. Additional Disclaimers: Neither Licensor's provision of the Product (including any separate Element thereof), nor any analysis, commentary, or otherwise (whether oral or written), provided in conjunction with the Product shall be deemed to constitute: (1) investment advice under applicable state or federal law, including, but not limited to, the Investment Advisers Act of 1940; or (2) any sort of transaction in securities for the account of others, including, but not limited to, any solicitation, negotiation or execution of the transaction. Neither Licensor nor its content providers shall be responsible for any investment decisions, damages or other losses resulting from use of the Product or any information provided in conjunction with it. Past performance does not guarantee future results. Licensor does not warrant that the Product complies with the requirements of FINRA or those of any other organization.
- 11. Licensor Status: Licensee understands and agrees that Licensor is acting only as a third-party research provider in making the Product available hereunder. Licensee further understands and agrees that Licensor is not: (1) an "investment adviser" ("Investment Advisor") as such term is defined in the federal Investment Advisers Act of 1940, or (2) a "broker" ("Broker") or a "dealer" ("Dealer"), as such terms are defined under the federal Securities Exchange Act of 1934. Licensee will not hold Licensor out in any communications as an Investment Adviser, a Broker or a Dealer,
- 12. Licensor Obligations: Licensor will notify Licensee in the case of a material change to the definition of Licensor ratings and/or material changes to editorial policies, including policies regarding restricted securities and policies regarding disclosure of ownership.



SCHEDULE 1 MORNINGSTAR® INSTITUTIONAL EOUITY RESEARCH SERVICE ELEMENTS

1. Analyst Access:

- Upon request, Licensor, acting through its Chief Operating Officer of Equity Research, or his or her delegate, will use commercially reasonable efforts to make its equity analysts available to the Licensee from time to time and in a timely fashion by telephone, electronic mail, or other means agreed upon between the parties, for purposes of discussion, scenario analysis, industry background, and other information to an extent reasonably sufficient as to aid the Use and Distribution of the Product as defined in Exhibit A:
- b. Licensee, or any successor in interest to Licensee or any company, person or entity under control of Licensee, shall not employ in any capacity, including subcontractor status, any Licensor employee who contributes to the Product, unless authorized in writing by Licensor. Licensee agrees that such action without prior written authorization from Licensor would result in significant damage to Licensor. During the Term of this Agreement, and for a one-year period thereafter, Licensee agrees to pay two times the annual compensation of the employee and any costs associated with replacing that employee as liquidated damages for its breach of this provision.
- Throughout the Term of this Agreement, Licensee may elect to designate Authorized Users for this Analyst Access research service element. Licensee's Chief Investment Officer, or his or her delegate, are authorized to designate the names of such Authorized Users.

2. Interactive Discounted Cash Flow Models:

- For each of the companies covered under this Agreement, Licensor will provide downloadable spreadsheet(s) in a commonly accepted file format (e.g., Microsoft Excel) that provide the basis of the Licensor's Fair Value Estimate:
- b. Each spreadsheet will contain:
 - i. projected pro forma balance sheets, income statements and cash flow statements for at least five years from the most recent audited annual financial results publicly filed by the covered company;
 - ii. return on invested capital and investment rate analysis for historical and at least five pro forms years;
 - iii. required rate of return estimates (based on fundamental factors) to determine the cost of equity;
- The spreadsheets' interactive interface allows Authorized Users to change assumptions for purposes of scenario analysis and further valuation study.
- 3. Company Reports (circa 5 pages, plus financials & definitions): In-depth analysis on all companies covered by Morningstar's equity analysts, excluding Initial Public Offerings.

<u>4.</u>	<u>Coverage:</u> The Product as defined in this Agreement shall apply to shares of companies tracked and analyzed by the Licensor that are listed or traded in the regions, countries, or exchanges indicated with an "X" below:			
	United States of America;	Japan:	Eurasia, India, the Middle	

Asia excluding Japan; Australia & New Zealand: East, and Africa;

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Latin America

5. Additional Services:

Prepared: 2/26/2010 (Rev. 20080430)

Canada:

European Union;

Product shall include additional written materials, beyond the Interactive Discounted Cash Flow Models (as defined in Section 2 above) and Company Reports (as defined in Section 3 above) made available on Morningstar's "Select" institutional equity research website at http://select.morningstar.com.

6. Fee Schedule:

- Access to Product excluding Analyst Access (as defined in Section 1 above) \$36,000.00 per annum.
- 2 amonth b. Analyst Access (as defined in Section 1 above) - \$4,000.00 per annum per Authorized User. Should Licensee elect to designate additional Authorized Users during the Term of this Agreement, such fees will be be prorated based on the date such Authorized User(s) is designated.
- Analyst Access (as defined in Section 1 above) \$20,000.00 per annum for ten (10) Authorized Users designated at the same time. Should Licensee elect to designate such additional Authorized Users in this manner during the Term of this Agreement, such fees will be prorated based on the date such group of Authorized Users is

designated. Should Licensee wish to designate additional Authorized Users for the Analyst Access service element above and beyond this group of ten (10) Authorized Users, either simultaneous to this designation or at any future time during the Term of this Agreement, such fees will be \$4,000.00 per annum, prorated based on the date such additional Authorized User(s) is designated.

First Amendment to Morningstar, Inc., License Agreement

This first amendment ("First Amendment") to that certain February 26, 2010 Morningstar, Inc., License Agreement between Morningstar, Inc. and the South Dakota Investment Council ("the Agreement") is entered into this 1st day of March, 2011 ("the First Amendment Effective Date")

The parties hereby agree to renew the Agreement as follows:

- A. The term of this First Amendment shall commence on March 1, 2011 and continue for 16 months through June 30, 2012.
- B. Licensee shall pay Licensor a total licensing fee ("Fee") of \$60,000 USD for the amended term of this First Amendment, allocated and invoiced as set forth in the amended fee schedule as follows:

Fee Schedule for First Amendment shall be:

(i) Access to Product excluding Analyst Access (as defined in Section 1 of The Agreement) to be invoiced according to the following schedule:

March 1, 2011	\$11,250
June 1, 2011	\$11,250
September 1, 2011	\$11,250
December 1, 2011	\$11,250
March 1, 2012	\$15,000

- (ii) Analyst Access (as defined in Section 1 of The Agreement) for an additional 15,000 USD per annum for up to five (5) Authorized Users. Should Licensee elect to designate additional Authorized Users of this Agreement, such additional fee shall be prorated based on the date such Authorized Users are designated and invoiced on a one-time basis immediately thereafter.
- C. All defined terms not explicitly defined in this First Amendment are as set forth in the Agreement. Except as otherwise explicitly provided herein, all terms and conditions of the Agreement remain in full force and effect.

Each of Licensor and Licensee has signed, or caused its authorized representative to sign, this binding First Amendment to the Agreement.

Licensor:

Morningstar, Inc.

Name: Nicolas S. Owens

Title: Director, Institutional Equity Research Business

Date: 3/30/11

Licensee:

South Dakota Investment Council

Name: Matthew L. Clark

Title: State Investment Officer

Date:

March, 28, 2011